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Nos. 84-871, 84-889, 84-1054, and 84-1069

In the Supreme Court of the United States
October Term, 1984

Louisiana Public Service Commission, Appellant
v.
Federal Communications Commission and
United States of America, Appellees

California and Public Utilities Commission
of California, et al., Petitioners
v.
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Public Utilities Commission of Ohio,
et al., Petitioners
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On Appeal And On Petitions For A Writ Of
Certiorari To The United States Court Of
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AMICI CURIAE BRIEF
IN SUPPORT OF APPELLANT AND
PETITIONERS

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WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana
RICHARD M. TROY
Assistant Attorney General
7th Floor, 234 Loyola Avenue
New Orleans, Louisiana 70112
J. DAVID MCNEILL III
COUNSEL OF RECORD
Assistant Attorney General
7434 Perkins Road
Baton Rouge, Louisiana 70808
Telephone: (504) 922-0187

JOHN L. GUBBINS
JEFFREY C. PAULSON
John Gubbins, Ltd.
20 North Clark Street, Suite 2600
Chicago, Illinois 60602
Illinois Citizens Utility Board
108 North State Street
Chicago, Illinois 60602

JOEL BLAU
PHILIP S. SHAPIRO
New York State Consumer Protection
Board, Utility Intervention Unit
99 Washington Avenue, Suite 1020
Albany, New York 12210

BARRY ZITSER
Consumer Counsel of the
Connecticut Division of
Consumer Counsel
One Central Park Plaza, Room 105
New Britian, Connecticut 06051

CORRINE K. A. WATANABE
Attorney General
State of Hawaii
RONALD SHIGEKANE
Deputy Attorney General
Consumer Advocate, Director of Department
of Commerce and Consumer Affairs
State Capitol
Honolulu, Hawaii 96813

BRIAN BURNETT
Assistant Attorney General
Utah Attorney General's Office
130 State Capitol Building
Salt Lake City, Utah 84114
Utah Committee of Consumer Services
408 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84145

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STATEMENT OF INTEREST

The Illinois Citizens Utility Board (CUB) is a non-profit public membership organization created to "represent and protect the interests of the residential utility consumers of the State" before the Illinois Commerce Commission, Federal Communications Commission, and other appropriate judicial and administrative bodies. Ill. Rev. Stat. ch. 111-2/3, § 905(a) (1983). CUB's activities are intended to promote the health, welfare, and prosperity of all the citizens of Illinois, and this purpose is considered to be a statewide public interest, not a private or special concern. CUB has over 120,000 contributing members and has participated in regulatory and legislative proceedings on behalf of

Illinois customers of telephone and telecommunications companies.

The Attorney General of Louisiana is the Chief Legal Officer of the State of Louisiana and is empowered to represent the interests of consumers in the State of Louisiana. La. Const. art. 4 § 8. Such authority includes the power to represent citizens of the State of Louisiana with respect to the rates and services of telephone companies and other public utilities.

The New York State Consumer Protection Board is a New York State Executive Department Agency authorized and empowered to represent the interests of the consumers of the State of New York. N.Y. Exec. Law §§ 552, 553. Such authority includes the power to represent consumers with respect to the

rates and services of telephone companies and other public utilities.

The Connecticut Consumer Counsel is the statutory advocate for the interests of Connecticut utility consumers.

The Consumer Advocate, Director of Department of Commerce and Consumer Affairs, of the State of Hawaii is designated by statute to represent the interests of all consumers in the state of Hawaii.

Under Utah state law, the Utah Committee of Consumer Services is to assist and represent residential, small business, and agricultural consumers of natural gas, electric, and telephone utilities before the Utah Public Service Commission and on appeals.

As detailed with respect to Illinois in Section B of the Argument, CUB and the other amici are interested in this proceeding for two significant reasons. First, affirmance of the Fourth Circuit decision is likely to have a dramatic and adverse impact on consumers' intrastate telephone rates. Second, the legitimacy of State regulatory objectives and mechanisms for telephone rates and services will be substantially jeopardized by an affirmance.

SUMMARY OF ARGUMENT

The purpose of this amicus brief is to address points not covered, or not covered in great detail, by Petitioners and to bring to the Court's attention the consequences of its decision in this case for continued State regulation of intrastate telephone companies and their customers. Amici discuss whether the plain language and intent of the Federal Communications Act 47 U.S.C. §§ 151 et seq., (Act) deprive the FCC of the authority to preempt State ratemaking jurisdiction over intrastate telephone companies and services. Amici emphasize, in particular, the lengthy history and pervasive scope of state telephone regulation, and the continuation of such regulation in the future in pursuit of

important State public policy objectives and indicate further that this traditional exercise of State regulatory powers creates a strong presumption against preemption. Further, amici discuss the provisions and historical context of Section 2(b) of the Act and argue that the clear Congressional intent embodied therein is to protect state regulatory authority over intrastate telephone service against federal encroachment.

ARGUMENT

SECTION 2(b) OF THE ACT PRECLUDES THE FCC FROM PREEMPTING STATE AUTHORITY TO SET RATES FOR INTRASTATE TELEPHONE SERVICE

A. Preemption Of Powers Historically Exercised By States May Not Be Sustained In The Absence Of Manifest Evidence Of Congressional Intent To Authorize Preemption.

Express federal preemption of state law or power has only been upheld in instances where Congress has explicitly indicated such an intent. Sufficiently strong indications may arise from the plain terms of the federal law or because the federal regulatory scheme is so pervasive as to leave no doubt, in the absence of statutory exemptions to the contrary, that Congress intended to preclude State action in the field. <u>Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Comm'n</u>, 461 U.S. 190, 203-4 (1983); <u>Fidelity Federal Savings and Loan Assn. v. De la Cuesta</u>, 458 U.S. 141, 153 (1982).

In either instance, however, if the area to be preempted is one in which states have traditionally

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In either instance, however, if the area to be preempted is one in which states have traditionally

exercised their police powers, preemption will not be presumed lightly; it will be sustained only where the Congressional intent to preclude state action is "unambiguous" and "unmistakably ordained." Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142, 146-7 (1963). In such a case, analysis must begin with the assumption that federal law was not intended to supersede the historic police powers of the State unless that was the "clear and manifest purpose of Congress." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). This assumption serves to assure that the balance between federal and state powers will not be disturbed unintentionally by Congress or unnecessarily by the courts. Jones v. Rath Packing Co., 430 U.S. 519,

525 (1977). Unless Congress has openly forsaken the critical balance of federal and state authority in favor of exclusive federal power, attempts to preempt the legitimate operation of state law must therefore be proscribed.

The Fourth Circuit's opinion ignores this test for measuring the propriety of preemptive action by the federal government. In fact, the Court does not discuss in any significant fashion the intent of Congress with respect to the preemptive limitations of the Act. The Court, instead, skips immediately to determine whether state law or policy "might" frustrate federal objectives. By so doing, the Court eliminates any burden on the federal agency to justify its infringement upon State authority, and thereby makes it

easy to find any speculative impediment attributable to state law sufficient to warrant preemption, *irrespective* of Congressional intent. Such an analysis effectively circumvents any restrictions on the federal power to preempt; any preemptive action could be justified by "possible" frustration despite Congressional intent to the contrary, or in the face of serious doubt as to whether Congress authorized such action. This approach exalts deference to federal agencies and courts at the expense of Congress and the States, upsetting the balance of state and federal powers. Such federal overreaching is neither compelled nor justified by the Supremacy Clause or this Court's decisions. *See U.S. Const.* art. 6, cl. 2. The starting point for

analysis must instead be, as this Court has consistently held, whether Congress has evidenced an intent to explicitly authorize or proscribe the particular preemptive action at issue, for in the absence of such authority, preemption cannot be sustained regardless of potential "frustration."

B. States Have Traditionally Exercised Their Police Powers To Regulate The Intrastate Rates, Charges, Services and Operations Of Telephone Companies.

Modern regulation of electric, gas and telephone utilities began at the state level in Wisconsin in 1907. By 1930, all but three states had initiated fairly extensive regulation of intrastate telephone rates and services, Wheat, The Regulation of Interstate Telephone Rates, 51 Harv. L. Rev. 846, 847 (1938), and all states currently

have such regulation. Most states did not distinguish between types of public utilities in establishing the scope and nature of their regulatory objectives and legislation and, as a result, intrastate state telephone service has been accorded state regulation to the same extent as electricity and natural gas. This Court has recently recognized the critical importance of state public utility regulation in the context of electricity, recognition which should similarly be extended to state telephone regulation. Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 205-6 (1983) and cases cited therein.

The experience of Illinois is typical of most states, and may be used

as an example of the nature and importance of state telephone regulation. The Illinois Public Utilities Act (PUA) was first enacted in 1913 and reenacted without significant change in 1921. *Ill. Rev. Stat.* ch. 111-2/3, §§ 1 *et seq.* In short, the purpose of the PUA is to assure the availability of efficient utility service at reasonable and equitable rates to as many citizens as possible. *Report of the Special Joint Committee to Investigate Public Utilities*, 48th Gen. Ass., 1913 Sen. Jl. 830, 862. At the same time, utilities are to receive a fair return on their property, including sufficient income to ensure ongoing reinvestment in the business. *Id*. at 955. The means of balancing these objectives is codified in the PUA and

the authority to do so is vested in the Illinois Commerce Commission (ILCC).

The provisions of the PUA provide plenary power to the ILCC to regulate Illinois public utilities and their intrastate activities. People v. City of Chicago, 349 Ill. 304, 182 N.E. 419 (1932). "Public utilities" subject to the PUA has always included companies involved in the transmission of telephone messages between points within the State. 1921 Ill. Laws 702, § 10.3(a); PUA, § 10.3(b), Ill. Rev. Stat. ch. 111-2/3, § 10.3(b) (1983). The ILCC has comprehensive powers over such companies, including the power to generally supervise management, PUA, § 8, Ill. Rev. Stat. ch. 111-2/3, § 8; to order construction or alteration of any utility facilities, Id., §§ 48, 49,

50, Ill. Rev. Stat. ch. 111-2/3, §§ 48, 49, 50; to require accounting and reporting, Id. §§ 9, 11-19, Ill. Rev. Stat. ch. 111-2/3, §§ 9, 11-19; to control financing and intercorporate relations, Id. §§ 8a, 20-29, 31, Ill. Rev. Stat. ch. 111-2/3, §§ 8a, 20-29, 31; and to examine and determine utility rates and services, Id., §§ 32-40, 41-43, Ill. Rev. Stat. ch. 111-2/3, §§ 32-40, 41-43. The ILCC's determinations are generally subject to notice and hearing, PUC, §§ 3, 60-67, Ill. Rev. Stat. ch. 111-2/3, §§ 3, 64-71, and to full judicial review, Id., §§ 68-71, Ill. Rev. Stat. ch. 111-2/3, §§ 72-75.

Of these various powers, the most important is the ability to evaluate and establish utility rates.

Report of the Special Joint Committee, supra, at 955. Rates must be just and reasonable to both the public and the utility, Id.; State Public Utilities Comm'n v. Springfield Gas and Electric Co., 191 Ill. 209, 125 N.E. 891 (1920). In this respect they must [illegible] be excessive, so that citizens are able to obtain and afford utility service, Report of the Special Joint Committee, supra, at 934, and at the same time must be sufficient to ensure reinvestment through depreciation and other means in order to provide high-quality and efficient service. Id. at 862, 933-36, 955; PUA §§ 32, 36, Ill. Rev. Stat. ch. 111-2/3, §§ 32, 36. In setting rates for utility services, including intrastate telephone services, the ILCC must constantly wrestle with the

inherent tension between the objectives of affordable and reasonable prices, so as to promote wide availability of service to the public, and efficient utility service which can only be obtained through a sufficient level of reinvestment.

The intersection of these ratemaking objectives is the determination of an appropriate level of depreciation. The ILCC is specifically empowered to "require any or all public utilities to keep such accounts as will adequately reflect depreciation, obsolescence and the progress of the arts" and to fix the proper and adequate rate of depreciation for utility property. PUA, § 14, Ill. Rev. Stat. ch. 111-2/3, § 14. Every public utility must conform its accounts to the

depreciation rates determined by the ILCC. *Id*. Illinois courts have sustained the ILCC's authority to consider evidence of depreciation and obsolescence, *Peoples Gas Light and Coke Co. v. Slattery*, 373 Ill. 31, 25 N.E.2d 482, *appeal dismissed* 309 U.S. 634 (1940), and this Court has upheld the ILCC's authority to establish an appropriate amount of depreciation expense for intrastate telephone ratemaking and the propriety of including depreciation as an expense underlying the determination of reasonable rates. *Lindheimer v. Illinois Bell Telephone Co.*, 292 U.S. 151 (1934); *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930). Moreover, courts have interpreted Illinois law to require the inclusion of

depreciation expense in setting rates which are as low as possible for the public. Illinois Bell Telephone Co. v. Commerce Commission, 414 Ill. 275, 286, 111 N.E.2d 329, 335 (1953).

Consistent with this authority, for seventy years the ILCC has required Illinois telephone utilities to account for depreciation and has included an appropriate amount for annual depreciation expense in the expenses of such companies for intrastate ratemaking purposes.1/ See,

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1/ Aside from the plain language of Section 14 of the PUA, there are other indications that the concept of depreciation in Illinois utility law includes the phenomenon of obsolescence; the retirement, earlier than originally anticipated, of property or equipment replaced by technologically superior or more economical machinery. As emphasized by the General Assembly, one key goal of the PUA is to

(Footnote Continued On Next Page)

e.g., Re Ross, 1915D P.U.R. 646 (Il.C.C.): Re Colchester Farmer's Telephone Co., 1915E P.U.R. 23 (Il.C.C.). Depreciation expense has always constituted a substantial percentage of the expenses of Illinois telephone utilities. For example, even in the earlier days of regulation,

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(Footnote Continued)

ensure that the standard of service keeps pace with the needs of the public and with the rapid improvement in methods and applications and to make certain that efficiency of service is a factor in utility capitalization. Report of the Special Joint Committee, supra, at 933, 935. The ILCC is supposed to adjust occasionally as it is forced to confront recurring, unsettled questions arising as new methods of operation and improvements in machinery are devised. Id.; See, Lindheimer v. Illinois Bell Telephone Co., supra, at 167 (depreciation embraces wear and tear, decay, inadequacy, and obsolescence).

annual depreciation expense comprised roughly 13 to 17 percent of Illinois Bell Telephone's operating expenses. Lindheimer v. Illinois Bell Telephone Co., 292 U.S. 151, 174 (1934), (comparison of note 25 with text). More recently, annual depreciation expense for ratemaking purposes exceeded $350 million, approximately 27.6 percent of Illinois Bell's total expenses, exclusive of taxes, and is the largest single expense item. Re Illinois Bell Telephone Co., 57 P.U.R. 4th 225, 261 (1983). Significant increases in annual depreciation expense also necessarily result in significant increases in a telephone utility's revenue requirement and ultimately its rates for customers.2/ Consequently, substantial

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2/ Rates are established to recover a "revenue requirement" which, in

(Footnote Continued On Next Page)

increases in depreciation expense can have dramatic impacts upon the affordability of telephone service and threaten the achievement of the State objective to make telephone service as widely available as possible.

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turn, equals the sum of all allowable expenses (including annual depreciation expense) and the product of the allowed rate of return and rate base. Rate base, in its simplest form, is the value of the company's property minus accrued depreciation for such property. An increase in annual depreciation expense increases total expenses dollar-for-dollar. However, the resulting increase in revenue requirement is partially offset by the increased addition to accrued depreciation which diminishes rate base. Thus, depending on the precise rate of return, among other things, a $100 increase in annual depreciation expense may result in only an $80 to $90 increase in rates, still a significant correlation.

Recent changes in depreciation policy in Illinois, caused in large part by FCC decisions, have led to increases in depreciation expense and telephone rates for intrastate service, accompanied by growing pressure on affordability. For example, Illinois Bell recently received approval to shorten the amortization period for the recovery of embedded station connections and inside wire costs from ten years to six years. The effect of Bell's proposal was to increase annual depreciation expense by approximately $65 million and the revenue requirement by about $50 million. Id., 57 PUR 4th at 237. Illinois Bell's additional proposed 1984 changes in depreciation policy were forecasted to increase depreciation expense by another $83

million and revenue requirements by roughly $63 million. Id., Second Interim Order at 4, (slip op. October 30, 1984). The effect of such rate increases is heightened by the additional proposal to recover such costs through increased customer service charges, thereby imposing additional inflexible barriers to affordable service. See Re Illinois Bell Telephone Co., Proposed Increase In Service Charges, Il.C.C. Dkt. 81-0115, (slip op., January 24, 1982). Thus, recent changes in depreciation policy have already placed a great deal of strain upon Illinois regulators as they continue to try to balance the conflicting state goals of affordability and efficiency in the provision of intrastate telephone service.

The dramatic transformation of the telecommunications industry, therefore, has enhanced, not diminished, the importance of intrastate telephone regulation to the States and their citizens. Certainly, this transformation was largely occasioned by factors outside of State control: improvements in technology opening certain markets to competition, changes in FCC policy in pursuit of deregulation, and the restructuring of American Telephone and Telegraph Co. (AT&T). State legislators and regulators, in acknowledging these changes and their effects, have chosen to revamp but not eliminate their regulation of intrastate telephone service, in order to ensure the continued attainment of important state

policy objectives. Far from being irrelevant, State telephone regulation is more critical than ever to the achievement of efficient and universally available service, since the balance between such conflicting goals has been made more precarious by the introduction of competition.

Again, the Illinois response serves as an instructive example of State reaffirmation of traditional regulatory objectives in the context of adapting to a transformed environment. Pursuant to provisions in Illinois's "Sunset" laws[3] a special bipartisan

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3/ Regulatory Agency Sunset Act, §§ 1, *et seq.*, *Ill. Rev. Stat.* ch. 127, §§ 1901 *et seq*; Regulatory Reform Act of 1979, §§ 1 *et seq.*, *Ill. Rev. Stat.* ch. 127, §§ 1951 *et seq*. The first of these Acts provided for automatic repeal of the Illinois PUA on December 31, 1985, unless the General Assembly

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committee of legislators and public members conducted a comprehensive two year evaluation of public utility regulation in Illinois, with a special emphasis on the nature of future state telecommunications regulation. The culmination of the effort, involving input from companies, government, large consumers, regulators and the public, was House Bill 1814 which was passed by the General Assembly in June, 1985. A-1. Many other states have undertaken, or will be undertaking, similar efforts and a large number have enacted legislation with roughly the same purposes as HB 1814. See e.g., Moore

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(Footnote Continued)

reenacted it or adopted a new regulatory scheme. Sunset Act, § 4.3, Ill. Rev. Stat. ch. 127, § 1904.3 (1983).

Universal Telephone Service Act, Cal. Rev. & Tax Code § 44000 et seq. (West Supp. 1985); N.C. Gen. Stat. §§ 62-3, 62-110 (1984 Int. Supp.); Va. Code §§ 56-481.1, 56-482.1, 56-484.2 (1985 Supp.).

HB 1814, The Universal Telephone Service Protection Law of 1985 (Universal Service Law), has several major objectives. The bill recognizes the importance of universal telephone service, the need to revise regulatory practice to respond to changes in the industry, the potential for competition as a means of providing service and the need to continue regulation of intrastate telephone service to protect and promote the well-being of all Illinois citizens. Universal Service Law, § 1 para. 13-101, A-1. HB 1814

establishes as state policy that telecommunications services should be "available to all Illinois citizens at just, reasonable and affordable rates" and that any modifications to State regulation should be implemented in a way which minimizes the possible disruptions to the system or customers. Id. § 1, paras. 13-103(a),(c); A-1, 2-3. To the extent consistent with other public policy objectives, such as universal service, competition is to be utilized as a means of providing telephone service, where it is also a more viable and economic mechanism than regulated monopoly. Id., § 1, para. 13-103(b), A-2. Finally, HB 1814 mandates that rates and charges for noncompetitive telecommunications services shall not in any way subsidize

the provision of competitive services. Id., § 1, paras, 13-103(d), 13-507, A-3, 21-23.

To achieve these objectives, the new Act creates a regulatory mechanism with sufficient flexibility to accomodate both regulated and competitive markets for the provision of services, and is designed to provide time for an orderly transition between regulated and competitive services in those intrastate markets where a switch from regulated monopoly to competition is viable and consistent with the public interest. Those services for which competition is not viable will continue to be subject to traditional regulatory principles. Id., § 1, paras. 13-101, 13-504, A-1, 18-19. Competitive services and rates therefore will be

subject to relatively little regulatory oversight. In general, local exchange service, because of its fundamental importance to universal service and because it is least susceptible at this time to widescale competition is more stringently protected and regulated.

Conversely, the competitive provision of inter-MSA service is anticipated much sooner and, if viable, will be subject to the marketplace rather than regulatory pressures. (Compare Id. § 1, para. 13-405 with para. 13-403; and § 1, para. 13-504 with para. 13-505. A-11-14, 18-20.) In short, the Universal Service Law recognizes the feasibility of competition without promoting it and accomodates such competition where it is demonstrably feasible and not

inconsistent with the protection and pursuit of other legitimate state policy objectives.

HB 1814 recreates an old balancing act for the ILCC by forcing it to address, in the context of a changing industry, the conflicts between preserving universal service and reasonable rates and the recovery of costs incurred in a transition to competitive service. This task is inherently complex and controversial, with serious consequences for all parties. It cannot be cavalierly dismissed as irrelevant or adequately resolved by a presumptous blindness which typically accompanies rigid adherence to ideological purity or textbook economic theory. Instead, the State of Illinois, as most states, has

chosen to responsibly reaffirm its commitment to fundamental public policy goals and has dedicated its powers to the accomplishment of those goals to the fullest extent possible. State authority to regulate intrastate rates is essential to the State's ability to establish and implement its goals in this area of critical importance to citizens. It is vital that this Court recognize the significance and legitimacy of State power and activities in this regard and consequently place a heavy burden on Respondents to justify their attempt to displace the States from their traditional role as protectors of the public interest in reasonable and affordable intrastate telephone rates and services.

C. The Terms And History Of The Communications Act Conclusively Demonstrate A Congressional Purpose To Prevent The FCC From Displacing Traditional State Ratemaking Authority For Intrastate Telephone Service.

When enacted, the Federal Communications Act of 1934, 47 U.S.C. §§ 151 et seq. (Act) was clearly designed to strengthen and consolidate federal jurisdiction over the provision of interstate communications services, including telephone service. The Act establishes broad authority on the part of the FCC to regulate interstate communications services in pursuit of statutory objectives. See Act, § 1, 47 U.S.C. § 151. This Court has also held, with respect to the broadcasting area, that the Act confers sufficient authority and flexibility upon the FCC to permit adjustment to new and dynamic

changes in the interstate communications industry. United States v. Southwestern Cable Co., 392 U.S. 157 (1958).

Perhaps in recognition of the expansive powers which it was creating in the FCC and the dangers inherent therein, Congress expressly and emphatically enacted limitations upon such powers beyond which it did not wish the agency to act. As a general matter, the Act throughout its entirety operates only to create jurisdiction over interstate communications. "Interstate communications," in turn, is defined to mean only transmissions or communications between states or, to some extent outside the United States, but does not, with respect to telephone messages, include communications "between points in the same State... or

the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission." Act, § 3(e), 47 U.S.C. 153(e). "State Commission" means any commission or organization which has regulatory jurisdiction with respect to the intrastate operations of carriers. Id., § 3(t), 47 U.S.C. § 153(t). These provisions, taken together, manifest the intention of Congress to restrict the scope of the FCC's expansive powers to interstate communications and to proscribe the exercise of such powers over intrastate telephone service regulated by States.

As if its intent were not sufficiently apparent Congress also included Section 2(b) which more explicitly reserves to the States their

ability to regulate intrastate telephone services. Act, § 2(b), 47 U.S.C. § 152(b). Section 2(b) provides, in pertinent part, that:

> [N]othing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier . . .

47 U.S.C. § 152(b). On its face, then, the Act is unambiguous as to the intent of Congress to deprive the FCC of jurisdiction over intrastate matters traditionally regulated by the States, including the determination of "charges" for intrastate services, of which depreciation expense is a part.

This Court has repeatedly held that where, as here, the language of a statute is clear and the construction

thereof does not lead to absurd consequences, the statutory terms are to be considered to mean what they say. United States v. Missouri Pacific R.R. Co., 278 U.S. 269, 278 (1929). Although the Court has recently taken exception to this rule even where statutory language has appeared plain, the circumstances justifying such exceptional investigations are not present in this case. See Philbrook v. Glodgett, 421 U.S. 707, 714 (1975). And the Court has indicated that it will not cast aside common sense in statutory interpretation to reach a convoluted result at cross-purposes with Congressional intent. See Philko Aviation, Inc. v. Shacket, 462 U.S. 406 (1983). In this case, the FCC's interpretation of the Act defies common

sense and is openly inconsistent with Congress's evident intent to preserve State ratemaking authority. The application of the "plain meaning" of Section 2(b) is unambiguous and the consequences are sensible and consistent with the entirety of the Act.

Section 20(b) of the Act, 47 U.S.C. § 220(b), relied upon by Respondents, does not detract from amici's interpretation. That section grants the FCC the power to prescribe the accounts and records which must be maintained "by carriers subject to this chapter" and requires, in particular, that the FCC prescribe for "such carriers" appropriate depreciation expenses. In addition, such carriers are prohibited from including in any form a depreciation schedule or expense

which might be included elsewhere as a depreciation charge or expense. Id. Respondents argue that this language not just permits, but requires preemption of State depreciation policies.

The meaning of these provisions of Section 20(b) is easily ascertained and fully consistent with amici's reading of Section 2(b) when read in the context of the entire Act. Since the carriers "subject to this Act" are only those which provide interstate communication services, and only to the extent they provide such services, the FCC's authority to prescribe depreciation charges applies only to such interstate services for the purpose of interstate ratemaking. When submitting data or forms to the FCC in connection with interstate regulation or

ratemaking, carriers are not to submit information relating to depreciation charges used for any purpose other than FCC regulation, thereby simplifying FCC reporting and eliminating the possibility of confusion or deception at the FCC. Far from preventing the use of other depreciation schedules or charges, such as for tax or state regulatory purposes, the Section recognizes the likelihood that differing schedules will exist and accomodates that prospect in a manner which ensures accuracy in carrier compliance with FCC requirements for interstate regulatory purposes. This straightforward reading of the Act is most palatable with its context and purposes; such a simple "accuracy-in-reporting" provision cannot justify the FCC's far reaching attempt

at preemption in this case. *Southwestern Bell Telephone Co. v. Arkansas Public Service Commission*, 584 F. Supp. 1087, 1089 (E.D. Ark.), *rev'd on other grounds*, 738 F.2d 901 (8th Cir. 1984); *Cincinnati Bell Telephone Co. v. Public Utilities Commission of Ohio*, 12 Ohio St. 3d 280, 283-4 (1984).4/

While the statute on its face, therefore, provides sufficient evidence to conclude that Congress never intended to preempt state regulatory authority

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4/ As noted above, the Illinois PUA includes similar language with respect to the ILCC's authority to establish accounts for depreciation and prohibits inconsistent reporting by Illinois public utilities. The provisions have never been interpreted as precluding different accounting or reporting treatment for tax or regulatory purposes outside the scope of the PUA. PUA, § 14, Ill. Rev. Stat. ch. 111-2/3, § 14.

over intrastate telephone companies, the legislative history corroborates the fact that Congress intended, in fact, to clarify, preserve and expand then existing state jurisdiction. As outlined in detail, supra, states had been very active in regulating intrastate telephone companies from the inception of modern public utility regulation. The federal government first initiated its regulatory efforts over interstate telephone service with the passage of the Mann-Elkins Act, amending the Interstate Commerce Act. Mann-Elkins Act, ch. 309, § 7, 36 Stat. 544 (1910). There is little legislative history behind the amendment, but the effect was to subject telephone companies to the jurisdiction of the Interstate Commerce Commission (ICC) and

terms of the Interstate Commerce Act with respect to their interstate operations. Gabel, The Early Competitive Era in Telephone Communication, 1893-1920, 34 Law & Contemp. Prob. 340, 357 (1969).

Between 1910 and 1934 the ICC made little or no effort to regulate even interstate telephone services, let alone intrastate activities. The ICC only handled four rate cases, each of little significance, each initiated by complaint. Id. Further, the ICC felt initially that it lacked jurisdiction over the filing of interstate telephone rates. Unrepeated Message Case, 44 I.C.C. 670, 673-4 (1917), modified 61 I.C.C. 541 (1921). See Preliminary Report on Communication Companies, H.R. Rep. No. 1272, 73d Cong. 2d Sess. (1934)

at xvi. Necessarily, the ICC initially felt incapable of establishing depreciation expenses even for interstate ratemaking purposes as well, and the responsibility for intrastate ratemaking, including the establishment of appropriate depreciation expenses, remained with the States.

The ICC did, however, consider its jurisdiction sufficient to establish accounting and reporting requirements. See Wheat, The Regulation of Interstate Telephone Rates, 51 Harv. L. Rev. 846, 847 n.5 (1938). In particular, the Transportation Act of 1920 amended the Interstate Commerce Act and provided the ICC with the authority and duty to prescribe appropriate depreciation charges "for carriers subject to this Act."[5] 41 Stat. 456, 493 (1920).

5/ Section 20(5) of the Interstate Commerce Act was the immediate

(Footnote Continued On Next Page)

Relying on this provision the ICC initiated proceedings to ascertain appropriate depreciation policies for telephone companies. Over the objections of State commissions, the ICC concluded that Section 20(5) empowered it to prescribe depreciation policy and expenses for property used "almost exclusively" in intrastate service. Depreciation Charges Of Telephone Companies, 118 I.C.C. 295, 332 (1926). The ICC, however, did not seek to act upon such asserted jurisdiction and emphasized that it intended to continue to rely upon state commissions for intrastate depreciation determinations. Id. at 374.[6/] The ICC continued to

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predecessor of Section 20(b) of the Communications Act, 47 U.S.C. § 220(b).

6/ The rationale for permitting continued State jurisdiction

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assert, while never exercising, jurisdiction over intrastate depreciation practices and related matters until the creation of the FCC. See Depreciation Charges of Telephone Companies, 177 I.C.C. 351 (1931); Accounting Rules For Telephone Companies, 203 I.C.C. 13 (1934).7/

(Footnote Continued)

included a recognition that States were better informed and equipped than the ICC to determine appropriate depreciation policies for intrastate service. This reasoning reflects both an awareness of extensive State experience and expertise and a lack of resources on the part of the ICC to adequately perform such activities. Id. at 374-5. See, Preliminary Report on Communications Companies, supra, at xvi.

7/ Issued July 9, 1934, after the effective date of the Communications Act, Id., 203 I.C.C. at 14.

Contemporaneous United States Supreme Court decisions also implied strongly that State jurisdiction over intrastate telephone service might be in jeopardy. In Houston, East and West Texas Ry. Co. v. U.S., 234 U.S. 342 (1914) ("Shreveport Cases"), the ICC determined that carrier rates between points within Texas were discriminatorily low relative to rates for interstate service between Shreveport and Texas. The ICC ordered that rates for the interstate service should be set no higher than rates for comparable intrastate service. The Court, in upholding the ICC order, strongly held that Congress could authorize such action in order to protect interstate commerce despite any incidental encroachment upon State

authority which might necessarily result. Id. at 353-5. The Court further held that the relevant provisions of the Interstate Commerce Act manifested Congressional intent to endow the ICC with such authority, notwithstanding a general proviso in the federal law purporting to preserve State jurisdiction over intrastate traffic. Id. at 355-7. While the proviso was not thereby rendered meaningless,8/ the Court's opinion substantially restricted its applicability.

8/ The Court found that the proviso, Interstate Commerce Act, § 3, 36 Stat. 539, 545 (1910), although not referring specifically to State power to determine intrastate rates, did at a minimum reserve such authority exclusively to the States. Congress "did not undertake to authorize the [ICC] to prescribe intrastate rates" but left such rates subject to the authority of the States. Id. at 357.

In addition, in *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930) the Court reviewed an order of the Illinois Commerce Commission (ILCC) with respect to intrastate telephone rates for Illinois Bell. In challenging the order, Bell asserted that Section 20(5) of the Interstate Commerce Act, *supra*, deprived the ILCC of the authority to establish depreciation expense for intrastate ratemaking by vesting exclusive power over depreciation in the ICC. The Court refused to so hold, at least until the ICC had taken some action indicating that it would attempt to exercise such exclusive jurisdiction. *Id.* at 159-60. In another portion of the opinion, however, the Court stressed the importance of properly maintaining the

boundaries between state and federal jurisdiction, and found that the ILCC had no authority to rule on the propriety of interstate telephone rates, since such power had been placed in the ICC. Id. at 148-9. The Court, therefore, recognized the ICC's exclusive authority over interstate telephone services and implied that, if the ICC took the requisite steps, its jurisdiction over intrastate depreciation policies and rates might also be upheld.

The point of this historical discussion is to place in context the subsequent actions and statements of Congress in its deliberations on, and drafting of, the Communications Act. By 1934, the ICC had emphatically stated that it already had jurisdiction over

intrastate depreciation policies and practices and implied with equal strength that given sufficient resources it might seek to assert such authority. The Supreme Court had demonstrated that the existing law might sustain such action, despite prior Congressional attempts to protect State jurisdiction over intrastate matters. Moreover, depreciation policy was a controversial regulatory issue of major importance at the time with respect to all utilities, awaiting and inviting definitive resolution.9/ Thus, the creation of a

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9/ For example, a large number of law review articles were written in the late 1920's and early 1930's analyzing the confusion surrounding depreciation law and policy. See, e.g., Wheat, The Regulation of Interstate Telephone Rates, 51 Harv. L. Rev. 846, 859 (1938); Roberts, Depreciation As An Element In Public Utility Valuation, 1 Mo. L. Rev. 145 (1936); Goddard, The

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federal regulatory commission with statutory powers equal to those of the ICC, and substantial resources as well, would pose a direct threat to States' ability to continue regulating intrastate telephone services, and related depreciation policy in particular.10/

(Footnote Continued)

Interest Of Public Utility Ratepayers In Depreciation, 48 Harv. L. Rev. 721 (1935).

10/ It is significant to note that the problems of rapid technological change and the need to determine how to account for the undepreciated portion of obsolete plants are not recent or unprecedented issues in telephone regulation. From the first days of state regulation, commissions were cognizant of technological change and defined depreciation to include the effects of such obsolescence. See, for example, Re Webster Telephone Company, 1915E PUR 526 (S.Dak.) (depreciation defined to include obsolescence due to a change or development in the art

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Congress was very much aware of the potential conflict between federal and state powers and resolved it in favor of the States through the adoption of Section 152(b).11/ As

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requiring new and improved apparatus); and note at pages 19-20, supra. The ICC repeatedly recognized the effect on depreciation caused by technological improvements in equipment and efficiency. Depreciation Charges Of Telephone Companies, 118 I.C.C. 295, 303 (1926) and 177 I.C.C. 351, 358, 401, 420-1 (1931). See also Denver v. Denver Union Water Co., 246 U.S. 178, 191 (1918). Thus, in determining jurisdictional boundaries with respect to "depreciation" it is a reasonable assumption that Congress understood the concept to include the phenomenon of "obsolescence" which is essentially the underlying concern of the FCC in its order on review in this case.

11/ In 1929, Congress had already conducted hearings on a bill to create a federal commission to regulate telephone services, at

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stated by the Senate sponsor, Mr. Dill:

> We have attempted in Title I to reserve to the State Commissions the control of intrastate telephone traffic. We have kept in mind the fact that the Interstate Commerce Commission, through the Shreveport decision and the decisions in similar cases, has gone so far in the regulation of railroads that the so-called "State regulation" amounts to very little.
>
> We have attempted in this proposed legislation, to safeguard State regulation by certain provisions to the effect that where existing intrastate telephone business is being regulated by a State commission, the provisions of the bill shall not apply.

78 Cong. Rec. 8823 (1934). Similarly,

(Footnote Continued)

which time states expressed their concerns and sought Congressional protection for their ability to exercise jurisdiction over intrastate services and depreciation policies. Hearings on S.6 before the Senate Committee on Interstate Commerce, 71st Cong. 1st and 2d Sess. (1929-30). See Stephan, Federal Regulation of Communications, 1934 Fed. B.A.J. 87.

the Senate Report on the bill states that Section 2 (47 U.S.C. § 152) "reserves to the States exclusive jurisdiction over intrastate telephone and telegraph communication." S.R. No. 781, 73d Cong., 2d Sess. at 3 (1934). The language of Section 2(b), then, strengthened from the proviso in the Interstate Commerce Act, was designed to cut back upon the scope of the federal powers upheld in Shreveport, thereby, at a minimum, preserving State intrastate ratemaking authority intact. Senator Dill's remarks also explain that Section 2(b) was intended to address State concerns over jurisdiction, which, at this period of time, centered most prominently on the ability to regulate depreciation. Further, States were then regulating intrastate depreciation;

therefore the provisions of the proposed Act were "not to apply" to such regulation. The only conclusion which can reasonably be supported from an analysis of the statute and its legislative history is that Congress specifically meant to deprive the FCC of jurisdiction over intrastate rates and services, including depreciation, thereby eliminating any federal threat to the traditional exercise of State regulatory powers.

Such a conclusion is supported by this Court's decision in Federal Power Comm'n v. Conway Corp., 426 U.S. 271 (1976), interpreting similar provisions in the Federal Power Act, 16 U.S.C. 824a et seq. The Federal Power Commission (FPC) in that case had conducted proceedings to determine the

reasonableness of a requested wholesale rate increase. Intervenors challenged the wholesale increase on the grounds that it would create an "unreasonable difference" between the utility's wholesale and retail rates, in contravention of Section 205(b) of the Power Act, 16 U.S.C. 824d(b). The FPC refused to address intervenor's claim, finding instead that the relief sought was beyond that granted to the FPC by the Act. Id. at 274-5.

In analyzing the issue of the extent of the FPC's authority, the Court noted that the Act only vested federal jurisdiction over wholesale electric sales, based on the plain language of Section 206(a), 16 U.S.C. 824e(a). The Court unanimously found that the FPC has no authority to prescribe the rates for

retail sales of electric companies or to remedy any discrimination between wholesale and retail rates by adjusting retail rates. Id. at 426. In so finding, the Court expressly relied upon the legislative history of Section 205 recognizing that the Section was drafted to avoid the result in Shreveport Cases and to foreclose the possibility of the FPC seeking to rectify alleged discrimination by regulating in any fashion the retail rate. Id. at 277 and note 5. As a result, the FPC's authority was restricted solely to wholesale rates.

Conway is analogous to this case, and supports amici's interpretation of the FCC's power. Section 2(b) of the Communications Act is intended to preserve state ratemaking

power over intrastate telephone service in the same manner and for the same purposes underlying Section 205(b) of the Power Act, as indicated by the reference to the Shreveport Cases in Conway, and the discussion at pages 56-57, supra. The effect of the two provisions is also identical: to preserve to the states the regulatory authority over telephone and electric utilities which they were exercising prior to the passage of the federal Acts in 1934 and 1935. For electric utilities this means retail rates and services; for telephone utilities, intrastate rates and services.

The FCC has, until the order on review in this case, acquiesced in State regulation of intrastate telephone rates, including the determination of

proper depreciation expense for intrastate property, even when such State regulation was inconsistent with its own policies and practices. The agency has also conceded the reasonableness of amici's statutory interpretation. In the Matter of Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, 89 F.C.C.2d 1094 (1982) rev'd. C.C. Dkt. 79-105 (F.C.C. January 6, 1983). Such consistent FCC action with respect to its jurisdiction is persuasive in ascertaining the proper scope and intent of the Act. Puerto Rico Telephone Co. v. F.C.C., 553 F.2d 694, 699 (1st Cir. 1977); North Carolina Utilities Commission v. F.C.C., 537 F.2d 787, 794 (4th Cir.) cert. denied 429 U.S. 1027 (1976). An

agency's long-standing interpretation of its enabling legislation deserves considerable deference in the absence of legislative action to the contrary. Udall v. Tallman, 380 U.S. 1, 16 (1965). In particular, nonaction by the FCC for such a long period of time is indicative of a lack of statutory power. As stated in Federal Trade Comm'n. v. Bunte Bros., Inc., 312 U.S. 349, 352 (1941),

> [J]ust as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred.

Moreover, it is likely that Congress was aware of the FCC's failure to exercise jurisdiction over intrastate depreciation and continued state regulation thereof, especially in the

years immediately after the Act took effect when the treatment of depreciation was still a hotly disputed issue. If Congress had intended for the FCC to displace state regulation in this respect, it could have amended the Act to clarify its intent. Congress has, on three occasions, already amended Section 2(b) of the Act to alter the appropriate scope of state jurisdiction. See 47 U.S.C.A. § 152(b) (1985). The FCC's interpretation through acquiescence in state regulation for almost 50 years belies its subsequent position on review here, and Congress' "failure to repeal or revise [the Act or relevant provisions] in the face of such administrative interpretation [is] persuasive evidence that the interpretation is the one intended by

Congress." CBS, Inc. v. FCC, 453 U.S. 267, 285 (1981) (quoting Zemel v. Rusk, 381 U.S. 1, 11 (1965)). See, Grove City College v. Bell, ___ U.S. ___, 104 S. Ct. 1211 (1984); Merrill Lynch, Pierce, Fenner & Smith v. Curran, 456 U.S. 353 (1982).

CONCLUSION

For these reasons, as well as for the reasons set forth in Petitioners' brief, amici request this Court to reverse the decision below.

Respectfully submitted,

By: ______________________
J. DAVID MCNEILL III
Counsel of Record
Assistant Attorney General
7434 Perkins Road
Baton Rouge, Louisiana 70808
Telephone: (504) 922-0187

JOHN L. GUBBINS
JEFFREY C. PAULSON
John Gubbins, Ltd.
20 North Clark Street, Suite 2600
Chicago, Illinois 60602
Illinois Citizens Utility Board
108 North State Street
Chicago, Illinois 60602

JOEL BLAU
PHILIP S. SHAPIRO
New York State Consumer Protection
Board, Utility Intervention Unit
99 Washington Avenue, Suite 1020
Albany, New York 12210

BARRY ZITSER
Consumer Counsel of the
Connecticut Division of
Consumer Counsel
One Central Park Plaza, Room 105
New Britian, Connecticut 06051

CORRINE K. A. WATANABE
Attorney General
State of Hawaii
RONALD SHIGEKANE
Deputy Attorney General
Consumer Advocate, Director of
Department of Commerce
and Consumer Affairs
State Capitol
Honolulu, Hawaii 96813

BRIAN BURNETT
Assistant Attorney General
Utah Attorney General's Office
130 State Capitol Building
Salt Lake City, Utah 84114
Utah Committee of Consumer Services
408 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84145

APPENDIX

AN ACT to add Article XIII to "An Act concerning public utilities", approved June 29, 1921, as amended, and to amend Section 4.3 of the "Regulatory Agency Sunset Act", approved September 22, 1979, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Article XIII is added to "An Act concerning public utilities", approved June 29, 1921, as amended, the added Article to read as follows:

ARTICLE XIII. TELECOMMUNICATIONS

(Ch. 111 2/3, new par. 13-100)

Sec. 13-100. This Article shall be known and may be cited as the Universal Telephone Service Protection Law of 1985.

(Ch. 111 2/3, new par. 13-101)

Sec. 13-101. Except to the extent modified or supplemented by the specific provisions of this Article, the Sections of this Act pertaining to public utilities, public utility rates and services, and the regulation thereof, are fully and equally applicable to noncompetitive telecommunications rates and services, and the regulation thereof, except where the context clearly renders such provisions inapplicable. Except to the extent modified or supplemented by the specific provisions of this Article, Articles I through V, Sections 9-221, 9-222 and 9-250, Articles X and XI of this Act are fully and equally applicable to competitive telecommunications service, competitive telecommunications rates and services, and the regulation thereof.

(Ch. 111 2/3, new par. 13-102)

Sec. 13-102. With respect to telecommunications services, as herein defined, the General Assembly finds that:

(a) universally available and widely affordable telecommunications services are essential to the health, welfare and prosperity of all Illinois citizens;

(b) recent federal regulatory and judicial rulings have caused a restructuring of the telecommunications industry and have opened some aspects of the industry to competitive entry, thereby necessitating revision of State telecommunications regulatory policies and practices;

(c) the competitive offering of telecommunications services may create the potential for increased innovation and efficiency in the provision of telecommunications services and reduced prices for consumer; and

(d) protection of the public interest requires continued regulation of telecommunications carriers and services for the foreseeable future.

(Ch. 111 2/3, new par. 13-103)

Sec. 13-103. Consistent with its findings, the General Assembly declares that it is the policy of the State of Illinois that

(a) telecommunications services should be available to all Illinois citizens at just, reasonable and affordable rates and that such services should be provided as widely and economically as possible in sufficient variety, quality, quantity and reliability to satisfy the public interest;

(b) when consistent with the protection of consumers of telecommunications services and the furtherance of other public interest goals, competition should be permitted to function as a substitute for certain aspects of regulation in determining the variety, quality and price of telecommunications services and that the economic burdens of regulation should be reduced to the extent possible consistent with protection of the public interest;

(c) all necessary and appropriate modifications to State regulation of telecommunications carriers and services should be implemented without unnecessary disruption to the telecommunications system or to consumers of telecommunications services and that it is necessary and appropriate to establish a reasonable period of time to permit preparation for orderly transitions in the provision of telecommunications services;

(d) the consumers of telecommunications services and facilities provided by persons or companies subject to regulation pursuant to this Act and Article should be required to pay only reasonable and non-discriminatory rates or charges and that in no case should rates or charges for non-competitive telecommunications services include any portion of the cost of providing competitive telecommunications services, as herein defined;

(e) the regulatory policies and procedures provided in this Article are established in recognition of the changing nature of the telecommunications industry and therefore should be subject to systematic legislative review to ensure that the public benefits intended to result from such policies and procedures are fully realized.

(Ch. 111 2/3, new par. 13-201)

Sec. 13-201. Unless otherwise specified, the terms set forth in Section 13-202 through 13-211 of this Article are used in this Act and Article as herein defined.

(Ch. 111 2/3, new par. 13-202)

Sec. 13-202. "Telecommunications carrier" means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this

State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the provision of, telecommunications services between points within the State which are specified by the user. Telecommunications carrier does not include, however:

(a) telecommunications carriers that are owned and operated by any political subdivision, public or private institution of higher education or municipal corporation of this State, for their own use, or telecommunications carriers that are owned by such political subdivision, public or private institution of higher education, or municipal corporation and operated by any of its lessees or operating agents, for their own use;

(b) telecommunications carriers which are purely mutual concerns, having no rates or charges for services, but paying the operating expenses by assessment upon the members of such a company and no other person but does include telephone or telecommunications cooperatives as defined in Section 13-212;

(c) a company or person which provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings, affiliated through substantial common ownership, control or development.

(Ch. 111 2/3, new par. 13-203)

Sec. 13-203. "Telecommunications service" means the provision or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of information, by means of electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services

(including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission.

"Telecommunications service" does not include, however:

(a) the rent, sale, or lease, or exchange for other value received, of customer premises equipment;

(b) telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electromagnetic, including light, transmission;

(c) community antenna television service which is operated to perform for hire the service of receiving and distributing video and audio program signals by wire, cable or other means to members of the public who subscribe to such service, to the extent that such service is utilized solely for the one-way distribution of such entertainment services with no more than incidental subscriber interaction required for the selection of such entertainment service.

The Commission may, by rulemaking, exclude (1) private line service which is not directly or indirectly used for the origination or termination of switched telecommunications service, (2) cellular radio service, (3) high-speed point-to-point data transmission at or above 9.6 kilobits, or (4) the provision of telecommunications service by a company or person otherwise subject to Section 13-202 (c) to a telecommunications carrier, which is incidental to the provision of service subject to Section 13-202 (c), from active regulatory oversight to the extent it finds, after notice, hearing and comment that such exclusion is consistent with the public interest and the purposes and policies of this Article.

(Ch. 111 2/3, new par. 13-204)

Sec. 13-204. "Local Exchange Telecommunications Service" means telecommunications service between points with-

in an exchange, as defined in Section 13-206, or the provision of telecommunications service for the origination or termination of switched telecommunications services.

(Ch. 111 2/3, new par. 13-205)

Sec. 13-205. "Interexchange Telecommunications Service" means telecommunications service between points in two or more exchanges.

(Ch. 111 2/3, new par. 13-206)

Sec. 13-206. "Exchange" means a geographical area for the administration of telecommunications services, established and described by the tariff of a telecommunications carrier providing local exchange telecommunications service, and consisting of one or more contiguous central offices, together with associated facilities used in providing such local exchange telecommunications service. To the extent practicable, a municipality, city or village shall not be located in more than one exchange.

(Ch. 111 2/3, new par. 13-207)

Sec. 13-207. "Local Access and Transport Area (LATA)" means a geographical area designated by the Modification of Final Judgment in U.S. v. Western Electric Co., Inc., 552 F. Supp. 131 (D.D.C. 1982), as modified from time to time.

(Ch. 111 2/3, new par. 13-208)

Sec. 13-208. "Market Service Area (MSA)" means a geographical area consisting of one or more exchanges, defined by the Commission for the administration of tariffs, services and other regulatory obligations. The term Market Service Area includes those areas previously designated by the Commission.

(Ch. 111 2/3, new par. 13-209)

Sec. 13-209. "Competitive Telecommunications Service" means a telecommunications service, its functional equivalent or a substitute service, which, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, is reasonably available from more than one provider, whether or not such provider is a telecommunications carrier subject to regulation under this Act. A telecommunications service may be competitive for the entire state, some geographical area therein, including an exchange or set of exchanges, or for a specific customer or class or group of customers, but only to the extent consistent with this definition.

(Ch. 111 2/3, new par. 13-210)

Sec. 13-210. "Noncompetitive Telecommunications Service" means a telecommunications service other than a competitive service as defined in Section 13-209.

(Ch. 111 2/3, new par. 13-211)

Sec. 13-211. "Resale of Telecommunications Service" means the offering or provision of telecommunications service primarily through the use of services or facilities owned or provided by a separate telecommunications carrier.

(Ch. 111 2/3, new par. 13-212)

Sec. 13-212. "Telephone or Telecommunications Cooperative" means any Illinois corporation organized on a cooperative basis for the furnishing of telephone or telecommunications service.

(Ch. 111 2/3, new par. 13-301)

Sec. 13-301. Consistent with the findings and policy established in paragraph (a) of Section 13-102 and paragraph (a) of Section 13-103, and in order to ensure the attainment of such policies, the Commission shall

(a) participate in all federal programs intended to preserve or extend universal telecommunications service, unless such programs would place cost burdens on Illinois customers

of telecommunications services in excess of the benefits they would receive through participation; and shall report on such programs together with an assessment of their adequacy and the advisability of participating therein in its annual report to the General Assembly, or more often as necessary;

(b) establish a program to monitor the level of telecommunications subscriber connection within each exchange in Illinois, and shall report the results of such monitoring and any actions it has taken or recommends be taken to maintain and increase such levels in its annual report to the General Assembly, or more often if necessary;

(c) order all telecommunications carriers offering or providing local exchange telecommunications service to propose low-cost or budget service tariffs and any other rate design or pricing mechanisms designed to facilitate customer access to such telecommunications service, and shall after notice and hearing, implement any such proposals which it finds likely to achieve such purpose;

(d) investigate the necessity and feasibility of establishing a fund from which telecommunications carriers offering or providing local exchange telecommunications service, whose costs of providing such service exceed the average cost of providing such service in Illinois, could receive revenues intended to mitigate the price impact on customers resulting from the high or rising cost of such service; and shall include the results and findings of such investigation together with any recommendations for legislative action in its first annual report to the General Assembly in 1986;

(e) Any telecommunications carrier providing local exchange telecommunications service which offers to its local exchange customers a choice of two or more local exchange telecommunications service offerings shall provide, to any

such customer requesting it, once a year without charge, a report describing which local exchange telecommunications service offering would result in the lowest bill for such customer's local exchange service, based on such customer's calling pattern and usage for the previous 6 months. At least once a year, each such carrier shall provide a notice to each of its local exchange telecommunications service customers describing the availability of this report and the specific procedures by which customers may receive it. Such report shall only be available to current and future customers who have received at least 6 months of continuous local exchange service from such carrier.

(Ch. 111 2/3, new par. 13-401)

Sec. 13-401. (a) No telecommunications carrier not possessing a certificate of public convenience and necessity or certificate of authority from the Commission at the time this Article goes into effect shall transact any business in this State until it shall have obtained a certificate of service authority from the Commission pursuant to the provisions of this Article.

No telecommunications carrier offering or providing, or seeking to offer or provide, any interexchange telecommunications service shall do so until it has applied for and received a Certificate of Interexchange Service Authority pursuant to the provisions of Section 13-403. No telecommunications carrier offering or providing, or seeking to offer or provide, any local exchange telecommunications service shall do so until it has applied for and received a Certificate of Exchange Service Authority pursuant to the provisions of Section 13-405.

No Certificate of Service Authority issued by the Commission shall be construed as granting a monopoly or exclusive

privilege, immunity or franchise. The issuance of a Certificate of Service Authority to any telecommunications carrier shall not preclude the Commission from issuing additional Certificates of Service Authority to other telecommunications carriers providing the same or equivalent service or serving the same geographical area or customers as any previously certified carrier, except to the extent otherwise provided by Sections 13-403 and 13-405.

Any certificate of public convenience and necessity granted by the Commission to a telecommunications carrier prior to the effective date of this Article shall remain in full force and effect, and such carriers need not apply for a Certificate of Service Authority in order to continue offering or providing service to the extent authorized in such certificate of public convenience and necessity. Any such carrier, however, prior to substantially altering the nature or scope of services provided under a certificate of public convenience and necessity, or adding or expanding services beyond the authority contained in such certificate, must apply for a Certificate of Service Authority for such alterations or additions pursuant to the provisions of this Article.

The Commission shall review and modify the terms of any certificate of public convenience and necessity issued to a telecommunications carrier prior to the effective date of this Article in order to ensure its conformity with the requirements and policies of this Article. Any Certificate of Service Authority may be altered or modified by the Commission, after notice and hearing, upon its own motion or upon application of the person or company affected. Unless exercised within a period of two years from the issuance thereof, authority conferred by a Certificate of Service Authority shall be null and void.

(b) The Commission may issue a temporary Certificate which shall remain in force not to exceed one year in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice and hearing, pending the determination of an application for a Certificate, and may by regulation exempt from the requirements of this Section temporary acts or operations for which the issuance of a certificate is not necessary in the public interest and which will not be required therefor.

(Ch. 111 2/3, new par. 13-402)

Sec. 13-402. The Commission is authorized, in connection with the issuance or modification of a Certificate of Interexchange Service Authority or the modification of a certificate of public convenience and necessity for interexchange telecommunications service, to waive or modify the application of its rules, general orders, procedures or notice requirements when such action will reduce the economic burdens of regulation and such waiver or modification is not inconsistent with the law or the purposes and policies of this Article.

Any such waiver or modification granted to any interexchange telecommunications carrier which has, or any group of such carriers any one of which has annual revenues exceeding $10,000,000 shall be automatically applied fully and equally to all such carriers with annual revenues exceeding $10,000,000 unless the Commission specifically finds, after notice to all such carriers and a hearing, that restricting the application of such waiver or modification to only one such carrier or some group of such carriers is consistent with and would promote the purposes and policies of this Article and the protection of telecommunications customers.

(Ch. 111 2/3, new par. 13-403)

Sec. 13-403. The Commission shall approve an application for a Certificate of Interexchange Service Authority only

upon a showing by the applicant, and a finding by the Commission, after notice and hearing, that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide interexchange telecommunications service. The Commission shall not issue a Certificate of Interexchange Service Authority to more than one facilities-based, interexchange telecommunications carrier for the offer or provision of any intra-Market Service Area interexchange telecommunications service prior to January 1, 1987.

The Commission shall not permit any telecommunications carrier providing interexchange telecommunications service to use intra-Market Service Area dialing arrangements in place July 1, 1985 which do not require the use of telecommunications carrier-specific access codes unless such carrier is also properly certified to offer or provide facilities-based local exchange telecommunications service, prior to a legislative determination to the contrary. The Commission shall conduct a study, and, after notice and hearing, issue a report with findings and recommendations concerning the advisability of permitting a change in the use of such dialing arrangements. Such report shall be submitted to the General Assembly on October 1, 1988.

The Commission shall have authority to alter the boundaries of Market Service Areas when such alteration is consistent with the public interest and the purposes and policies of this Article, provided however, that no significant alteration in such boundaries shall take place prior to January 1, 1987 and no such alteration shall affect the dialing arrangements specified in the immediately preceding paragraph of this Section. A determination by the Commission with respect to Market Service Area boundaries shall not modify or affect the rights or obligations of any telecommunications carrier

with respect to any consent decree or agreement with the United States Department of Justice, including, but not limited to, the Modification of Final Judgment in United States v. Western Electric Co., 552 F. Supp. 131 (D.C.C. 1982), as modified from time to time.

(Ch. 111 2/3, new par. 13-404)

Sec. 13-404. Any telecommunications carrier offering or providing the resale of either local exchange or interexchange telecommunications service must first obtain a Certificate of Service Authority. The Commission shall approve an application for a Certificate for the resale of local exchange or interexchange telecommunications service upon a showing by the applicant, and a finding by the Commission, after notice and hearing, that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide the resale of telecommunications service.

(Ch. 111 2/3, new par. 13-405)

Sec. 13-405. The Commission shall approve an application for a Certificate of Exchange Service Authority only upon a showing by the applicant, and a finding by the Commission, after notice and hearing, that

(a) the applicant possesses sufficient technical, financial and managerial resources and abilities to provide local exchange telecommunications service;

(b) that the exercise of the Certificate's authority by the applicant would not adversely affect prices, network design, or the financial viability of the principal provider of local exchange telecommunications service.

The Commission shall not approve or issue a Certificate of Exchange Service Authority to more than one telecommunications carrier for any exchange prior to January 1, 1989; provided, however, that a Certificate of Exchange Service Au-

thority may be issued before such time, subject to appropriate Commission approval, pursuant to this Section, to any telecommunications carrier providing predominantly direct non-switched access service between a customer or user and any telecommunications carrier providing inter-MSA, inter-LATA or inter-state telecommunications service, or between such telecommunications carriers, for the purpose of providing such direct access service.

(Ch. 111 2/3, new par. 13-406)

Sec. 13-406. No telecommunications carrier offering or providing noncompetitive telecommunications service pursuant to a valid Certificate of Service Authority or certificate of public convenience and necessity shall discontinue or abandon such service once initiated until and unless it shall demonstrate, and the Commission finds, after notice and hearing, that such discontinuance or abandonment will not deprive customers of any necessary or essential telecommunications service or access thereto and is not otherwise contrary to the public interest. No telecommunications carrier offering or providing competitive telecommunications service shall discontinue or abandon such service once initiated except upon 30 days notice to the Commission and affected customers. The Commission may, upon its own motion or upon complaint, investigate the proposed discontinuance or abandonment of a competitive telecommunications service and may, after notice and hearing, prohibit such proposed discontinuance or abandonment if the Commission finds that it would be contrary to the public interest.

(Ch. 111 2/3, new par. 13-407)

Sec. 13-407. The Commission shall monitor and analyze patterns of entry and exit, and applications for entry and exit, for each relevant market for telecommunications services

and shall include its findings together with appropriate recommendations for legislative action in its annual report to the General Assembly.

(Ch. 111 2/3, new par. 13-501)

Sec. 13-501. No telecommunications carrier shall offer or provide telecommunications service unless and until a tariff is filed with the Commission which describes the nature of the service, applicable rates and other charges, terms and conditions of service, and the exchange, exchanges or other geographical area or areas in which the service shall be offered or provided. The Commission may prescribe the form of such tariff and any additional data or information which shall be included therein.

(Ch. 111 2/3, new par. 13-502)

Sec. 13-502. (a) All telecommunications services offered or provided under tariff by telecommunications carriers shall be classified as either competitive or noncompetitive. A telecommunications carrier may offer or provide either competitive or noncompetitive telecommunications services, or both, subject to proper certification and other applicable provisions of this Article. Any tariff filed with the Commission as required by Section 13-501 shall indicate whether the service to be offered or provided is competitive or noncompetitive.

(b) A service shall be classified as competitive only if, and only to the extent that, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, such service, or its functional equivalent, or a substitute service, is reasonably available from more than one provider, whether or not any such provider is a telecommunications carrier subject to regulation under this Act. All telecommunications services not properly classified as competitive shall be classified as non-

competitive. The Commission shall have the power to investigate the classification of telecommunication service, on its own motion or upon complaint, and to modify such classification or reclassify any service, in whole or in part, after notice and hearing. If, upon such motion or complaint, the Commission enters into a hearing or investigation upon the propriety of any service classification pursuant to this Section, the Commission shall make its determination and issue its final order no later than 120 days from the date such hearing or investigation is initiated.

(c) No tariff classifying a new telecommunications service as competitive or reclassifying a previously noncompetitive telecommunications service as competitive, which is filed by a telecommunications carrier which also offers or provides noncompetitive telecommunications service, shall be effective unless and until such telecommunications carrier offering or providing, or seeking to offer or provide, such proposed competitive service prepares and files a study of the long-run marginal cost underlying such service. Such study shall be given proprietary treatment by the Commission at the request of such carrier if any other provider of the competitive service, its functional equivalent, or a substitute service in the geographical area described by the proposed tariff has not filed, or has not been required to file, such a study.

(d) In the event any telecommunications service has been classified and filed as competitive by the telecommunications carrier, and has been offered or provided on such basis, and the Commission subsequently determines after investigation that such classification improperly included services which were in fact noncompetitive, the Commission shall have the power to determine and order refunds to customers for any overcharges which may have resulted from the improper

classification, or to order such other remedies provided to it under this Act, or to seek an appropriate remedy or relief in a court of competent jurisdiction.

(e) Any telecommunications carrier which seeks to file a tariff classifying a new telecommunications service as competitive or reclassifying a previously noncompetitive telecommunications service as competitive may, instead of filing such new tariff and offering and providing such service as competitive subject to refund, apply to the Commission, prior to offering or providing such service as competitive, for an order finding that the proposed tariff is proper and consistent with law. Provided, however, that prior to August 1, 1987 any telecommunications carrier which seeks to file a tariff classifying a new interexchange telecommunications service as competitive or reclassifying a previously noncompetitive interexchange telecommunications service as competitive shall apply for prior Commission approval of such tariff pursuant to the procedures of this paragraph (e). Any telecommunications carrier applying for Commission approval pursuant to this paragraph (e) shall provide timely and effective notice of its application and proposed tariff to potentially affected providers and customers in a manner to be determined by the Commission.

Upon such application and notice, the Commission may make its findings without hearing within 21 days of the filing of the application and may allow such tariff to take immediate effect thereafter if there is no request for hearing by potentially affected providers or customers. The Commission shall, however, enter into hearings to determine the propriety and legality of the proposed tariffs upon such request or if the Commission, in its discretion, believes such hearings are necessary.

If the Commission enters into hearings upon the application, it shall issue a final order within 120 days of such application, and, if the Commission fails to issue an order within such period, the application shall be deemed granted, unless, however, the Commission, the applicant and all parties to the hearing agree to extend such time period. The Commission shall have the power to issue an interim order allowing the proposed tariff to take effect during the 120 day period subject to refund and such other conditions as the Commission may provide.

(Ch. 111 2/3, new par. 13-503)

Sec. 13-503. With respect to rates or other charges made, demanded or received for any telecommunications service offered, provided or to be provided, whether such service is competitive or noncompetitive, telecommunications carriers shall comply with the publication and filing provisions of Sections 9-101, 9-102, and 9-103.

(Ch. 111 2/3, new par. 13-504)

Sec. 13-504. Except where the context clearly renders such provisions inapplicable, the ratemaking provisions of Article IX of this Act relating to public utilities are fully and equally applicable to the rates, charges, tariffs and classifications for the offer or provision of noncompetitive telecommunications services. Provided, however, that such ratemaking provisions do not apply to any proposed change in rates or charges, or proposed change in any classification or tariff resulting in a change in rates or charges, for a noncompetitive local exchange telecommunications service offered or provided by a local exchange telecommunications carrier with no more than 15,000 subscriber access lines, where such carrier is also not a subsidiary of a holding company incorporated outside Illinois. Proposed changes in rates, charges, classifications, or tariffs meeting these criteria shall be permitted upon the filing of the proposed tariff and 30 days notice to the Commission and all potentially affected customers; such proposed changes shall not be subject to suspension, but the Commission may, upon its own motion or upon complaint, investigate whether such proposed change is just and reasonable and if it finds, after notice and hearing, that such changes are unjust or unreasonable, in whole or in part, the Commission shall have the power and duty to establish the rates, charges, classifications, or tariffs it finds to be just and reasonable. The Commission shall investigate whether any such proposed change is just and reasonable if 5 percent or more of the potentially affected access line subscribers of the telecommunications carrier file a petition or complaint requesting such investigation.

(Ch. 111 2/3, new par. 13-505)

Sec. 13-505. Proposed changes in rates or charges, or any classification or tariff provision affecting rates or charges, for any competitive telecommunications service, shall be treated pursuant to this Section as follows;

(a) any proposed decrease in rates or charges, or proposed change in any classification or tariff resulting in a decrease in rates or charges, for competitive local exchange or interexchange telecommunications service shall be permitted upon the filing of the proposed rate, charge, classification or tariff;

(b) any proposed increase in rates or charges, or proposed change in any classification or tariff resulting in an increase in rates or charges, for a competitive interexchange telecommunications service shall be permitted only upon the filing of the proposed rate, charge, classification or tariff and upon notice to all potentially affected customers through a notice

in each such customer's bill prior to the date for implementation of such increase or change, or, where such customers are not billed, by an equivalent means of prior notice;

(c) any proposed increase in rates or charges, or proposed change in any classification or tariff resulting in an increase in rates or charges, for a competitive local exchange telecommunications service shall be treated as though such service were noncompetitive, pursuant to the applicable provisions of Section 13-504.

(Ch. 111 2/3, new par. 13-506)

Sec. 13-506. (a) Telecommunications carriers may file proposed tariffs for any competitive local exchange telecommunications service, which includes and specifically describes a range, band, formula, or standard within or by which a change in rates or charges for such telecommunications service could be made without prior notice or prior Commission approval. The Commission shall approve such a proposed tariff only if the telecommunications carrier demonstrates, and the Commission finds, that any and all rates or charges within the band or range, or determinable by the operation of the formula or standard, are consistent with the public interest and the purposes and policies of this Article and Act, and are likely to remain so for the foreseeable future. To the extent any proposed band or range encompasses rates or charges which are not consistent with the public interest and the purposes and policies of this Article and Act or otherwise fully proper, or any proposed formula or standard determines rates or charges which are not consistent with the purposes and policies of this Article and Act or fully proper, the Commission shall have the power to modify the level, scope or limits of such band or range, and to modify or limit the operation of such formula or standard, as necessary, to ensure that rates or charges resulting therefrom are consistent with the purposes and policies of this Article and Act and fully proper, and likely to remain so in the foreseeable future.

(b) The Commission may require a telecommunications carrier to file a variable tariff as described in paragraph (a) for any or all competitive local exchange telecommunications service which is offered or provided by such carrier, if the Commission finds, after notice and hearing, that the determination of rates or charges for such service by such a tariff would improve the Commission's ability to effectively regulate such rates or charges and that such improvement is required by the public interest. Any such tariff required by the Commission shall be approved only if it is also consistent with the provisions of paragraph (a) of this Section.

(c) When the Commission approves a variable tariff pursuant to this Section, as proposed or modified, the telecommunications carrier shall place such tariff in effect thereafter and shall determine rates or charges according to the provisions thereof.

(Ch. 111 2/3, new par. 13-507)

Sec. 13-507. In permitting, approving, investigating or establishing rates, charges, classifications or tariffs for noncompetitive services offered or provided by a telecommunications carrier which also offers or provides competitive services, the Commission shall not allow or establish rates, charges, classifications or tariffs which in any way, directly or indirectly, include or reflect:

(a) the value of investment in facilities used, jointly or separately, to provide competitive service, to the extent such facilities are used to provide competitive service;

(b) expenses incurred for the provision of competitive service, including, but not limited to, the salaries or wages,

or portion thereof, of employees whose employment activities are directed, in whole or in part, to the provision of competitive service, to the extent such expenses are incurred to provide competitive service;

(c) any incremental risk or increased cost of capital which is associated with or attributable to the competitive portion of such carrier's business.

In the event that facilities are utilized or expenses are incurred for the provision of both competitive and noncompetitive services, the Commission shall allow or establish rates or charges for the noncompetitive services which reflect only that portion of such facilities or expenses properly and reasonably allocable to the noncompetitive services. Every telecommunications carrier shall, to the fullest extent practicable, identify such common facilities and expenses in its books and accounts and shall clearly describe any means used to allocate such common facilities or expenses between noncompetitive and competitive services and related rates or charges. If the Commission determines that such accounting and reporting requirements alone are insufficient to permit the Commission to meet the ratemaking and tariff supervision obligations of this Section, it shall have the power to take or require such additional action as necessary to ensure that rates or charges for noncompetitive services reflect only the value of facilities, or portion thereof, used and useful, and the expenses or portion thereof reasonably and prudently incurred, for the provision of such noncompetitive services. The Commission shall, in such event, also establish, by rule, any additional accounting or reporting procedures, rules, regulations or mechanisms necessary to identify and properly allocate the value or amount of such facilities or expenses.

For the purposes of this Section, the Commission shall not allocate to any competitive service all or part of the value of

investment in facilities utilized, or expenses incurred, in connection with providing noncompetitive service.

The Commission may establish, by rule, appropriate methods for calculating the long-run marginal costs of providing any telecommunications service, and for determining whether the rates or charges for telecommunications service are at a level equal to or greater than such long-run marginal cost. The Commission may order any telecommunications carrier to conduct a long-run marginal cost study and to provide the results thereof to the Commission. Any cost study provided to the Commission pursuant to the provisions of this Section may, in the Commission's discretion, be accorded proprietary treatment.

(Ch. 111 2/3, new par. 13-508)

Sec. 13-508. The Commission is authorized, after notice and hearing, to order a telecommunications carrier which offers or provides both competitive and noncompetitive telecommunications service to establish a fully separated subsidiary to provide all or part of such competitive service where:

(a) no less costly means is available and effective in fully and properly identifying and allocating costs between such carrier's competitive and noncompetitive telecommunications services; and

(b) the incremental cost of establishing and maintaining such subsidiary would not require increases in rates or charges to levels which would effectively preclude the offer or provision of the affected competitive telecommunications service.

(Ch. 111 2/3, new par. 13-509)

Sec. 13-509. A telecommunications carrier offering or providing competitive telecommunications service may negotiate with customers or prospective customers for the provision by it of such service, and in so doing, may offer or agree to pro-

vide such service on such terms and for such rates or charges as it deems reasonable, without regard to any tariffs it may have filed with the Commission with respect to such services. Within 10 days after concluding any such agreement, the telecommunications carrier shall file any contract or memorandum of understanding for the provision of telecommunications service, which shall include the rates or other charges, practices, rules or regulations applicable to the agreed provision of such service. Upon filing its contract or memorandum the telecommunications carrier shall thereafter provide service according to the terms thereof, unless the Commission finds, after notice and hearing, that the continued provision of service pursuant to such contract or memorandum would substantially and adversely affect the financial integrity of the telecommunications carrier or would cause the cross-subsidization of any competitive service by any noncompetitive service.

Any contract or memorandum entered into and filed pursuant to the provisions of this Section may, in the Commission's discretion, be accorded proprietary treatment.

(Ch. 111 2/3, new par. 13-601)

Sec. 13-601. The provisions of Article VII of this Act are fully applicable only to telecommunications carriers offering or providing noncompetitive telecommunications service, and the Commission's regulation thereof, except that the approval of contracts and arrangements with affiliated interests required by paragraph (3) of Section 7-101 shall not apply to such contracts or arrangements by such telecommunications carriers where the total obligation thereunder does not exceed the lesser of 1 million dollars or 5 percent of such carrier's prior annual revenue from noncompetitive services.

(Ch. 111 2/3, new par. 13-701)

Sec. 13-701. Notwithstanding any other provision of this Act to the contrary, the Commission has no power to supervise or control any telephone cooperative as respects assessment schedules or local service rates made or charged by such a cooperative on a nondiscriminatory basis. In addition, the Commission has no power to inquire into, or require the submission of, the terms, conditions or agreements by or under which telephone cooperatives are financed. A telephone cooperative shall file with the Commission either a copy of the annual financial report required by the Rural Electrification Administration, or the annual financial report required of other public utilities.

(Ch. 111 2/3, new par. 13-702)

Sec. 13-702. Every telecommunications carrier operating in this State shall receive, transmit and deliver, without discrimination or delay, the conversations, messages or other transmissions of every other telecommunications carrier with which a joint rate has been established or with whose line a physical connection may have been made.

(Ch. 111 2/3, new par. 13-703)

Sec. 13-703. (a) The Commission shall design and implement a program whereby each telecommunications carrier providing local exchange service shall provide a telecommunications device capable of servicing the needs of the deaf or severely hearing-impaired together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as deaf or severely hearing-impaired by a licensed physician, audiologist or a qualified State agency and to any subscriber which is an organization representing the deaf or severely hearing-impaired as determined and specified by the Commission pursuant to subsection (d).

(b) The Commission shall design and implement a program, whereby each telecommunications carrier providing

local exchange service shall provide a dual party system, using third party intervention to connect deaf or severely hearing-impaired persons and offices of organizations representing the deaf or severely hearing-impaired as determined and specified by the Commission pursuant to subsection (d) with persons of normal hearing by way of intercommunications devices for the deaf or severely hearing-impaired and the telephone system, making available reasonable access to all phases of public telephone service to deaf or severely hearing-impaired telephone subscribers. In order to design a dual party relay system which will meet the requirements of deaf and severely hearing-impaired persons available at a reasonable cost the Commission shall initiate an investigation and conduct public hearings to determine the most cost-effective method of providing dual party relay service to the deaf or severely hearing-impaired when using telecommunications devices and therein solicit the advice, counsel, and physical assistance of Statewide nonprofit consumer organizations of the deaf in such hearings and during the development and implementation of the system. The Commission shall phase in this program, on a geographical basis, over a 3-year period ending January 1, 1989.

(c) The commission shall establish a rate recovery mechanism, which shall not exceed 3¢ per month for each line of a subscriber to allow telecommunications carriers providing local exchange service to recover costs as they are incurred under this Section.

(d) The Commission shall determine and specify those Statewide organizations representing the deaf or severely hearing-impaired which shall receive a telecommunications device pursuant to subsection (a) or a dual party relay system pursuant to subsection (b), or both, and in which offices the

equipment shall be installed in the case of an organization having more than one office. The Commission shall direct the telecommunications carriers subject to its jurisdiction and this Section to comply with its determinations and specifications in this regard.

(Ch. 111 2/3, new par. 13-704)

Sec. 13-704. Each page of a billing statement which sets forth charges assessed against a customer by a telecommunications carrier for telecommunications service shall reflect the telephone number or customer account number to which the charges are being billed.

(Ch. 111 2/3, new par. 13-801)

Sec. 13-801. The Commission shall prepare and issue an annual report on the status of the telecommunications industry and Illinois regulation thereof on January 31 of each year beginning in 1986. Such report shall include:

(a) A review of regulatory decisions and actions from the preceding year and a description of pending cases involving significant telecommunications carriers or issues;

(b) a description of the telecommunications industry and changes or trends therein, including the number, type and size of firms offering telecommunications services, whether or not such firms are subject to State regulation, telecommunications technologies in place and under development, variations in the geographic availability of services and in prices for services, and penetration levels of subscriber access to local exchange service in each exchange and trends related thereto;

(c) the status of compliance by carriers and the Commission with the requirements of this Article;

(d) the effects, and likely effects of Illinois regulatory policies and practices, including those described in this Article, on telecommunications carriers, services and customers;

(e) any recommendations for legislative change which are adopted by the Commission and which the Commission believes are in the interest of Illinois telecommunications customers;

(f) any other information or analysis which the Commission is required to provide by this Article or deems necessary to provide.

The Commission's report shall be filed with the Joint Committee on Legislative Support Services, the Governor, and the Public Counsel and shall be publicly available. The Joint Committee on Legislative Support Services shall conduct public hearings on the report and any recommendations therein.

(Ch. 111 2/3, new par. 13-802).

Sec. 13-802. The Commission shall study the effects on telecommunications carriers, providers and customers and on telecommunications services and prices likely to result from the issuance of multiple Certificates of Service Authority for Intra-Market Service Area and local exchange service.

The Commission shall also study the need to retain mandatory prior Commission approval of tariffs classifying a new interexchange telecommunication service as competitive or reclassifying a previously noncompetitive interexchange telecommunications service as competitive as provided in Section 13-502(a), and the effects of eliminating such mandatory prior approval. Such studies shall include notice and an opportunity for participation and comment by all interested and potentially affected parties. Such studies shall be completed by January, 1987 and a summary thereof, together with any legislative recommendations, shall be included in the Commission's Annual Report due on January 31, 1987.

(Ch. 111 2/3, new par. 13-803)

Sec. 13-803. The provisions of this Article, Sections 13-101 through 13-803 of this Act, are repealed effective December 31, 1991.

Section 2. Section 4.3 of the "Regulatory Agency Sunset Act", approved September 22, 1979, as amended, is amended to read as follows:

(Ch. 127, par. 1904.3)

Sec. 4.3. The following Acts are repealed December 31, 1985:

(Ch. 111, rep. pars. 1601 through 1670)

(1) The "Illinois Barber Law", approved July 18, 1947, as amended.

(Ch. 111, rep. pars. 1801 through 1839)

(2) "The Illinois Beauty Culture Act", approved June 30, 1925, as amended.

((CH. 111 2/3, REP. PARS. 1 THROUGH 95))

((3) "AN ACT CONCERNING PUBLIC UTILITIES", APPROVED JUNE 29, 1924, AS AMENDED.)

(Ch. 111, rep. pars. 2001 through 2040)

(3) ((4)) The "Collection Agency Act", approved September 8, 1974, as amended.

Section 3. This Act takes effect January 1, 1986, except Section 2 and this Section takes effect upon this Act becoming a law.